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IN THE

# Supreme Court of the United States

OCTOBER TERM, 1949.

No. 742

THE ARLINGTON, INC. AND STURM-BICKEL CORPORATION, ILLINOIS CORPORATIONS,
*Petitioners,*

*vs.*

EDWARD MAYER,
*Respondent.*

## PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT AND BRIEF IN SUPPORT THEREOF.

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## PETITION FOR WRIT OF CERTIORARI.

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*To the Honorable Chief Justice and Associate Justices of the United States:*

Petitioners, The Arlington, Inc. and Sturm-Bickel Corporation, corporations organized under the laws of the State of Illinois, petition this court for the issuance of a Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit, before judgment in that court, to the end that it be directed to reverse the judgment of the United States District Court for the Northern District of Illinois, Eastern Division, and to dismiss the proceedings for want of jurisdiction.

## SUMMARY OF THE MATTER INVOLVED.

Respondent, Edward Mayer, united with four other Lessees of separate apartments under separate written leases to sue Petitioners, as "Landlords" under § 205 of the Housing and Rent Act of 1947 for treble damages (T. 50 U. S. C. A. § 1895). None of the Lessees possessed the required jurisdictional amount of $3,000 (T. 28 U. S. C. A. § 1331)* Each of the counts was for the individual claim of each of the plaintiffs, and the claim of respondent, Edward Mayer, was for $127.50.

Petitioners filed a motion to dismiss each of the counts on the ground (1) of lack of the jurisdictional amount and (2) of the misjoinder of the distinct actions which did not originate from the same transactions.** Petitioners relied on the decision in *Fields* v. *Washington,* 173 F. (2) 701. During the pendency of the case the Court of Appeals of the Seventh Circuit decided in favor of the jurisdiction in conflict with the decision of the Third Circuit (*Adler* v. *Northern Hotel Co.,* 175 F. (2) 619). The District Court was compelled to follow the decision of its own Court of Appeals and overruled the motion.

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* Section 1331 of the Judiciary Act of 1948 provides:
"The district courts shall have original jurisdiction of all civil actions wherein the matter in controversy exceeds the sum or value of $3,000, exclusive of interest and costs, and arises under the Constitution, law or treaties of the United States."

** Rule 20 of the Federal Rules of Civil Procedure provides:
"(a) Permissive Joinder. All persons may join in one action as plaintiffs if they assert any right to relief jointly, severally, or in the alternative in respect of or arising out of the same transaction, occurrence, or series of transactions or occurrences and if any question of law or fact common to all of them will arise in the action."

There is pending another suit by four other Lessees against the Petitioners in the District Court. Other tenants represented by the same attorneys have threatened to institute suit in the Federal Court, and it was stipulated that the rent be held in escrow pending the disposition of this case.

For the purpose of testing the jurisdictional question on which the several Courts of Appeal are not in accord, Petitioners chose to abide by the Motion to Dismiss as to the second count involving the claim of respondent, Edward Mayer, and a judgment was enteerd in his favor for treble damages, from which judgment Petitioners prosecuted an appeal to the Court of Appeals.

There are pending many other suits involving the identical questions, and it would be necessary in each of the cases to proceed with the trial, thereafter appeal to the court which had already decided the jurisdictional question in the affirmative, and thereafter apply for a review here on certiorari because of the conflict in the decisions. This would not only throw a great hardship on the parties, but also on the courts, which would be required to go through with trials and useless appeals in order to obtain a review in this court on the jurisdictional question.*

In addition to the decision in the *Fields* case, *supra*, the Third Circuit rendered another decision, which held that jurisdiction was lacking (*Koster* v. *Turchi*, 173 F. (2) 608). The Court of Appeals for the Fifth Circuit is evidently in accord with the Third Circuit, that the $3,000 jurisdictional amount is necessary to confer jurisdiction (*Steinfeldt* v. *Haymond*, 175 F. (2) 768). The District Court of Kentucky which had before it the views of the

* We are filing simultaneously with this Petition another Petition where twenty-five tenants united in one suit under twenty-five separate counts where we are asking the issuance of the writ directly to the District Court under § 1651 of the Judiciary Act of 1948.

Third Circuit and the views of the Seventh Circuit adopted the views of the former and dismissed the action for want of jurisdiction (*Hershenrader* v. *Campbell*, 85 F. Supp. 75). Some of the district courts are following the lead of the Third Circuit and others are following the lead of the Seventh Circuit and there is a great deal of confusion as a result of these conflicting decisions.

The Federal Courts are clogged with cases of this type, and if the jurisdictional amount is indispensable, then they should be relieved of the burden, and the parties should not be compelled to go through expensive trials for the purpose of getting a final judgment and then prosecute an appeal to a Court of Appeals which has already determined that issue in conflict with the decisions of two other circuits.

## QUESTIONS INVOLVED.

1. Whether under the Housing and Rent Act of 1947, the jurisdictional amount of $3,000 as required under Section 1331 (T. 28, U. S. C. A. § 1331) is indispensable in order to confer jurisdiction on the district courts of a suit for treble damages under Section 205 of the Housing and Rent Act of 1947.

2. Whether five tenants with five distinct causes of action, whose separate claims are alleged in separate counts, may unite in one suit under Rule 20 of the Federal Rules of Civil Procedure when none of the claims originated from the same transaction or series of transactions.

## REASONS FOR THE ALLOWANCE OF THE WRIT.

1. There is a conflict in the decisions of the United States Courts of Appeal on the question whether the jurisdictional amount required under section 1331 of the Judiciary Act of 1948 (T. 28 U. S. C. A. § 1331) is indispensable under the Housing and Rent Act of 1947.* The district courts in the Third Circuit are compelled to follow the decision of their Court of Appeals and are dismissing the actions for want of jurisdiction. The district courts in the Seventh Circuit are compelled to follow the decisions of their circuit and sustain the jurisdiction. The district courts of the other circuits follow one or the other decisions, and there is a great deal of confusion as a result of such conflicting decisions. The writ should be issued to harmonize the decision on this important federal question.

2. Section 1254 (1) (T. 28 U. S. C. A. § 1254)* expressly authorizes the granting of a writ of certiorari before judgment, and the issuance of the writ at any time before judgment is expressly authorized by § 2101 (T. 28 U. S. C. A. § 2101(a)).**

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* Section 1331 of the Judiciary Act of 1948 provides:
"The district courts shall have original jurisdiction of all civil actions wherein the matter in controversy exceeds the sum or value of $3,000, exclusive of interest and costs, and arises under the Constitution, laws or treaties of the United States."

* Section 1254 of the Judiciary Act of 1948 provides:
"Cases in the courts of appeals may be reviewed by the Supreme Court by the following methods:
(1) By writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree."

** Section 2101 of the Judiciary Act of 1948 provides:
"(d) An application to the Supreme Court for a writ of certiorari to review a case before judgment has been rendered in the court of appeals may be made at any time before judgment."

3. Due to the fact that the Court of Appeals had already decided the jurisdictional question in conflict with other Courts of Appeal, this court should not require the unnecessary delay and expense to file briefs and await another decision of the same court.

## PRAYER FOR RELIEF.

Petitioners, therefore, pray that this court may grant a Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit before judgment to the end that its order overruling the motion to dismiss be reversed, with directions to dismiss the action for want of jurisdiction.

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## BRIEF IN SUPPORT OF PETITION.

### Jurisdiction Invoked.

The jurisdiction of this court is invoked under §§ 1254 and 2101 of the Judiciary Act of 1948 (T. 28 U. S. C. A. §§ 1254 and 2101). The judgment was entered on March 9, 1950 and the case was docketed in the Court of Appeals on March 28, 1950. The writ is sought prior to the decision of the Court of Appeals because it had already decided the question in another case and in conflict with decisions of other courts.

## OPINION BELOW.

No opinion was filed by the District Court, but in overruling the Motion to Dismiss it based its decision on the ruling of the Court of Appeals for the Seventh Circuit in *Adler* v. *Northern Hotel Co.*, 175 F. (2) 619.

## A STATEMENT OF THE CASE.

Respondent, Edward Mayer, united with four other plaintiffs in one complaint filed January 4, 1949, against Petitioners for treble damages under § 205 of the Housing and Rent Act of 1947. The complaint consists of six counts. The First Count was a suit by Joseph E. Beatty, who alleged that he was a tenant for many years occupying apartment 401 at a rental of $92.50 and that commencing January 1949 Petitioners demanded $140 per month, and that they did not furnish decorating or repairs as required by law, and that the property was not known in the community as a hotel, and that he was damaged in the amount of $75.00, and he was entitled to treble damages in the amount of $225, and prayed also to restrain Petitioners from collecting the increased mental (Tr. 2-3).

The Second Count was a suit by respondent, Edward Mayer, who occupied apartment 314 and paid $57.50, and his rent was increased to $85.00. He sued for treble damages in the sum of $127.50, and the allegations were identical with the first count (Tr. 3-4).

Counts 3, 4 and 5 were suits by other plaintiffs which contained the identical allegations except as to the apartments and the amounts of rent. The sixth count was for injunctional relief (Tr. 4-8).

A motion to dismiss was filed by Petitioners on April 28, 1949 which urged as grounds: (1) want of jurisdiction because of the absence of the required $3,000 under § 1331 and (2) misjoinder of causes of action which did not originate from the same transaction or series of transactions (Tr. 16). The motion was overruled on January 20, 1950 and the case was set for trial for April 24, 1950

(Tr. 17). On March 9, 1950 Petitioners moved for leave to withdraw the answer to the second count and to abide by the motion to dismiss on the two grounds stated above so that a final judgment may be entered in order to take an appeal to the Court of Appeals and thereafter apply to this court for a Writ of Certiorari (Tr. 20). A memorandum of law was filed in support of the motion calling the attention of the court to the conflict in the decisions on the jurisdictional question (Tr. 21). The district court allowed the withdrawal of the answer and entered judgment in favor of the plaintiff, Edward Mayer, and against the defendants for $127.50 and fixed the appeal bond in the amount of $500 to operate as a supersedeas (Tr. 22). The appeal was immediately taken (Tr. 23) and the appeal bond was duly filed and approved, and the case was docketed in the Court of Appeals on March 28, 1950.

## ARGUMENT.

### I.

**There is a Conflict in the Decisions of the United States Courts of Appeal on the Question Whether the Jurisdictional Amount is Necessary to Confer Jurisdiction Under the Housing and Rent Act of 1947, and the Writ Should Issue to Harmonize the Decisions on This Important Federal Question.**

The United States Court of Appeals for the Third Circuit held in *Fields* v. *Washington*, 173 F. (2) 701, that the jurisdictional amount was *indispensable* under the Housing and Rent Act of 1947, and dismissed the proceedings for want of jurisdiction. The *opposite conclusion* was reached by the Court of Appeals for the Seventh Circuit with Mr. Justice Minton dissenting.

The majority opinion in *Adler* v. *Northern Hotel Co.*, 175 F. 2d 619, said (p. 620):

> "Defendants call attention to the case of *Fields* v. *Washington*, 3 Cir., 173 F. 2d 701, and make the point that a federal court in order to be competent within the meaning of the Housing and Rent Act, *supra*, must find its jurisdiction under some provision of law existing at the time of the enactment of § 205 as part of the Act; they claim that the Act contains no general grant of jurisdiction, and argue that § 205 means any federal court authorized by a pre-existing jurisdictional grant to hear and determine a particular case, requiring as one of its conditions an amount in controversy in excess of $3,000. It does not appear that the court in *Fields* v. *Washington, supra*, considered § 205(e) of the Emergency Price Control Act, or that it was called to its attention."

In the minority opinion written by Mr. Justice Minton, he said (p. 623):

"The majority opinion states that when Sec. 205 (c) and (e) of the original Act are read together, 'they produce language in effect identical with § 205 of the Housing and Rent Act.' (The latter the 1947 Act here under consideration.) That the District Court was a court of competent jurisdiction under the original Act, regardless of amount, is because Congress clearly said so when in subsection 205 (c) it gave the District Courts jurisdiction in all controversies under Sec. 205. To repeat, it reads as follows: 'The district courts shall have jurisdiction * * * concurrently with State and Territorial courts, of *all* other proceedings under section 205 of this Act.' This and Sec. 205 (e) are the provisions of the original Act which the majority says we must consider in determining what the 1947 Act means, and on the basis of which it concluded that the two mean just the same thing."

He further said (p. 624):

"The words *'competent jurisdiction'* were used advisedly. Otherwise, the jurisdiction of this Court and of other Federal courts might have been mooted. Congress dealt with jurisdiction in the 1947 Act in a completely different way than the manner in which it dealt therewith in the original Act. Then too, Congress might very properly have intended to keep the District Courts within their traditional bounds and to relieve them from acting as justice of peace courts.

"The exact question here presented was decided just oppositely by the Third Circuit in an opinion by Judge Maris, Chief Judge of the United States Emergency Court of Appeals, in *Fields* v. *Washington,* 173 F. 2d. 701. I cannot dispose of this carefully reasoned opinion as cavalierly as the majority. I think that Judge Maris, an expert on this type of law, was fully cognizant of Sec. 205 (e) and all the other sections of the original Act as well as of the 1947 Act."

In *Steinfeldt* v. *Haymond,* 175 F. 2d. 768, the Court of Appeals for the Fifth Circuit said (p. 769):

"Brought by a tenant against his landlord, the suit was for $2100.00 treble damages for rent overcharges

> of $700.00 claimed to have been exacted between January 1, 1946, and January 6, 1947. Though, therefore, the suit was brought after enactment of the Housing and Rental Act of 1947, the limited jurisdictional provisions of Section 205 of that act, Cf. *Fields* v. *Washington*, 173 F. 2d 701, did not apply, and the suit was properly brought under the saving provisions of Sec. 901 (b), 50 U. S. C. A. Appendix."

As a result of these conflicting decisions the District Courts are also not in accord.

In *Hershenrader* v. *Campbell*, 85 F. Supp. 75, the court said (p. 75):

> "In *Fields* v. *Washington*, 3 Cir., 173 F. 2d. 701, 702, a tenant sued the landlord for $672.00 (treble the amount of the alleged overcharge), Attorney's fees and costs, under the 1947 Housing and Rent Act, as amended. The Court dismissed the action for lack of pecuniary jurisdiction. Upon authority of that case and in the light of the reasoning in that opinion, it is obvious that this Court is without jurisdiction in the present case."

It also said:

> "The jurisdiction given in Section 925(c) of Title 50 U. S. C. A. Appendix to District Courts, 'concurrently with State and Territorial courts, of all * * * proceedings under section 205' of the Emergency Price Control Act of 1942 was materially changed in the enactment of the 1947 Housing and Rent Act. In the latter, the jurisdictional grant reads, 50 U. S. C. A. Appendix, § 1895: 'Suit to recover such amount may be brought in any Federal, State, or territorial Court of competent jurisdiction * * *' 'It follows' says the opinion in *Fields* v. *Washington, supra*, 'that the competency of a Federal district court to entertain such a suit by a tenant must be based upon some other statutory grant of jurisdiction over the subject matter and the parties."

In discussing the *opposite decision* of the Seventh Circuit the court said (p. 75):

> "An opposite conclusion to that reached in *Fields* v. *Washington* is determined by the Court of Appeals of the Seventh Circuit in *Adler* v. *Northern Hotel Company*, 1949, 175 F. 2d 619."

In holding that the reason in the *Fields* case was sound, the court said (p. 75):

> "The clear-cut analysis by the Court in *Fields* v. *Washington* of the jurisdictional grants in the Emergency Price Control Act of 1942 and in the Housing and Rent Act of 1947, indicates that Congress intended to *limit* the jurisdiction of District Federal Courts just as the language used indicates it has done. This Court is without jurisdiction, and this action will be dismissed, without prejudice, however, to plaintiff's right to institute an action in a Court of 'competent jurisdiction.'"

The confusion in the decisions of the District Courts is apparent. The District Courts of the Third and Fifth Circuit are compelled to follow the decisions of their respective circuits, and they are dismissing the suits for want of jurisdiction, while the district courts in the Seventh Circuit are bound by the decision of the Seventh Circuit and are sustaining the jurisdiction. Among the district courts which held that the jurisdictional amount was not required are the decisions in *Sampson* v. *Thomas*, 76 F. Supp. 691; *Adams* v. *Backlund*, 81 F. Supp. 643; *United States* v. *Resch*, 84 F. Supp. 389, 392. As against these, the district courts in the following decisions have held the jurisdictional amount was indispensable: *Fox* v. *34 Hillside Realty Corp.*, 79 F. Supp. 832; *Luftman* v. *Ross*, 75 F. Supp. 627; *Spieler* v. *Haas*, 79 F. Supp. 835; *McCrae* v. *Johnson*, 84 F. Supp. 220.

The writ should, therefore, issue to harmonize the decisions on this important jurisdictional question.

## II.

**Several Plaintiffs May Not Unite in One Suit Against Several Defendants for Distinct Causes of Action Which Did Not Originate From the Same Transaction or Series of Transactions.**

In *Hooper & Co.* v. *Samuel M. Langstrom,* 56 F. Supp. 577, the Court considered Rules 20-21 and 57 of the Federal Rules of Civil Procedure in a case involving the *joinder of distinct causes of action by several plaintiffs.* A motion to dismiss the complaint on the ground of misjoinder was made by Samuel M. Langstrom, one of the defendants. After citing from the rule that all persons may join in one action as plaintiffs if they assert any right to relief, jointly, severally or in the alternative in respect of or arising out of the same transaction or occurrence or series of transactions or occurrences, or if any question of law or fact common to all of them will arise in the action, and after pointing out that under the Federal rules of misjoinder of parties misjoinder does not give ground for dismissal of an action, the Court pointed out that there was not only a misjoinder of parties, but *a misjoinder of causes of action,* and that where a misjoinder of causes of action occurs, *the complaint must be dismissed as to the cause which is misjoined.* At page 581, the court said:

> "The right to relief asserted under each patent does not arise under the same transaction and there is no common question of law or fact as to both defendants that might arise. Upon evidence submitted, there is no basis upon which these two causes can be joined under Rule 20 (A) *supra,* and they must, therefore, be severed, Rule 21 *supra.*"

The Court thereafter sustained the motion to dismiss.

In an opinion rendered by Judge LaBuy in *Colburn* v. *Birr*, 4 F. R. D. 391, he said:

> "Rule 20 cannot be applied for that rule pertains to the 'same transaction, occurrence or series of transactions or occurrences.' If the plaintiff had included the Martin and Grundwald patents in his original complaint, it would have been a misjoinder of causes. *Hooper* v. *Langstrom*, D. C., 56 F. Supp. 577."

The rule that there can be no joinder of distinct causes of action by several plaintiffs which did not arise out of the same transaction or series of transactions was also adopted in *Fleming* v. *Whitemore*, 41 F. Supp. 767, 768.

In *Carl Gutmann & Co.* v. *Rohrer Knitting Mills*, 86 F. Supp. 506, the court said (p. 511):

> "This is not a case where plaintiff alleges a single cause of action but is uncertain as to which of two or more defendants may be liable. Here, while arising out of the same transaction, occurrence, or series of transactions or occurrences, the gravamen of the complaint is not the doing or failing to do a single act by one or more persons, but rather the doing of entirely separate and distinct acts, in the one instance by one corporation and in the other instance by another corporation and four individuals. This is not the alternative situation contemplated by the Rule."

The rule that distinct causes of action may not be joined in one suit by several plaintiffs was also adopted by the Illinois courts in construing the identical rule under the civil practice act of Illinois (*Gombi* v. *Taylor Washing Machine Co.*, 290 Ill. App. 53, 62).

In applying the law to the Rent Control Act and in holding that persons who lack the jurisdictional amount may not unite to commence an action under the Rent Control Act, in *Fox et al.* v. *34 Hillside Realty Corporation*, 79 F. Supp. 832, the Court says:

"Plaintiffs urge that jurisdiction is conferred on this court by the Housing and Rent Act of 1947, as amended, 50 U. S. C. A. Appendix § 1881 *et seq.* and by the Declaratory Judgment Act, 28 U. S. C. A. §§ 2201, 2202; that this is an action to enforce a penalty brought under 28 U. S. C. A. § 1355 and that the matter in controversy exceeds the sum of $3,000 exclusive of interests and costs and arises under the Constitution or law of the United States."

In holding that the Court was without jurisdiction of the subject matter, it was said:

"Plaintiffs may not aggregate their claims. When the demands of the numerous plaintiffs are separate and distinct, each must have a claim in the jurisdictional amount; only when plaintiffs unite to enforce a joint or common interest is aggregation permissible. *Pinel* v. *Pinel*, 240 U. S. 594, 36 S. Ct. 416, 60 L. Ed. 817. In *Luftman* v. *Ross*, S. D. N. Y., 1948, 75 F. Supp. 627, 628, Judge Rifkind wrote:

'The contention that the threatened rent increases of all the plaintiffs may be aggregated is ill founded. The plaintiffs in this action clearly assert several rights.'

See also *Hock* v. *250 Northern Ave. Corporation*, 2 Cir., 142 F. 2d 435; *Spieler* v. *Haas*, 79 F. Supp. 835."

We have shown above that there is a conflict between the several Courts of Appeal and the District Courts on the jurisdictional question, and that the right to join the several causes of action which did not originate from the same transactions or a series of transactions is also a debatable question. Therefore, the writ should be issued.

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